

# Hidden in the woods? Meaning, determining, and practicing of ‘common welfare’ in the case of the German public forests

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**Abstract** This article addresses the German debate on the issue of the common welfare designation of public forests. In the first part, drawing on two case studies, the political discourse on the issue is introduced. Two major competing ‘story lines’ can be made out that are both based on a long tradition of controversially discussed concepts of regulatory forest policy. While they both emphasise that common welfare services in forestry run counter to profit orientation, they fundamentally differ with regard to the consequences for forest policy, e.g., considering the degree of state intervention. Afterwards, an overview on the scientific debate on common welfare in the German context is given, and different concepts of common welfare determination are distinguished. Existing approaches of common welfare determination in German forest policy are related to these concepts and discussed. It is argued that the common welfare designation of the public forest is only insufficiently implemented by the actual governance arrangements. Based on this consideration, eventually, the implementation of a procedural concept of common welfare operationalisation in Germany’s public forests at the local level is proposed. While such a concept will not solve all complex problems

related to the determination of common welfare in public forestry, it would notably contribute to a more operational definition of common welfare in public forestry and a more informed public debate on the issue.

**Keywords** Common welfare · Public forests · Privatisation · Discourse · Governance · Participation

## Introduction

Disputes about the interpretation and importance of ‘common welfare’ play an essential role in Germany’s forest policy. The country’s public forests, which represent about 54% of the German forest area (34% owned by the state, 19% communal forests), are legally assigned with the specific designation as a good for common welfare. This designation has been the issue of a long-lasting debate and significantly shaped the political discussion on the regulation of public forests in Germany during the last decades (WBBML 1994; Volz 1995; Weber 2001, 2002). The discussions renewed themselves in vigour when the recently federally adopted National Biodiversity Strategy was put into place. The strategy itself points out the particular importance of public forests regarding biodiversity and relates this task to the common welfare designation of these forests.

In the article at hand, we deal specifically with this German debate on common welfare and public forestry. The overall goal of this article is to present different perspectives on this debate, to analyse its various components against the background of the related scientific debate, and, finally, to deliver ideas for a better consideration of the issue in German public forest policy. Consequently, the paper is structured as follows: First, an introduction will be

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This is one in a series of articles dedicated to Prof. Dr. Dr. h.c. Gerhard Oesten on the occasion of his 60th birthday.

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given and outline how the term of common welfare gained importance in German forestry sector discourses and how it has also been used as a political resource. Our introduction will be completed by data based on two empirical case studies dealing with the issue. Second, we elaborate on the German legal, political, and scientific discourse on ‘common welfare’ and forest policy. This is based on a literature review and the outcomes of a respective expert workshop conducted in June 2005. Third, the scientific debate is linked to the specific forest policy debate by discussing identified concepts of common welfare determination in forest policy against the scientific debate background. Finally, conceptual ideas are developed on how to better consider and operationalise the common welfare designation of German public forests in future.

### **An enduring discourse of German forest policy: common welfare versus profit-oriented (public) forestry**

In German forest policy and science, respectively, there is a long tradition of considering forests to be ‘multifunctional’. It was scientists like Victor Dieterich (1953) and Karl Hasel (1971) who established the doctrine of multiple forest ‘functions’ and the respective necessity of multifunctional forest management. Even much precursing these pioneers, intensive discussions on the various options of how to use the German forests occurred (Endres 1922; Wurz 2001). Accordingly, German forest economists (cf. Speidel 1984; Oesten and Roeder 2002) frequently singled out the specific character of forestry, which is seen as significantly different in comparison with other economic sectors. For example, the specific management of a natural good, such as forests, is elaborated on. Furthermore, the use of this natural property with its long-term (intra-generational) growth, its expansive surface area and, moreover, its high appreciation throughout society is emphasised. Next to the products forests produce, first and foremost being timber, the forest ecosystem has an important impact, e.g., on climate and water balance, and the aesthetic, and psychological needs of humans (Bastian and Schreiber 1994). The variety of potentially conflicting options of forest uses together with the risks of irreversible impacts reveal how conflict laden the management of forests is (cf. Volz 1995; Blum et al. 1996; Oesten and Roeder 2002; Winkel 2007).

The awareness of the functional diversity of German forests is also reflected in the institutions regulating their use. Accordingly, multifunctional forest management of all forests of the country has already been stipulated for decades in § 1 of Federal Forests Act. The central principle of sustainable forest management therein, as well as in all subnational state forest acts, is based on the idea of

ensuring an enduring utility of forests for society, even if this management principle has only vaguely been legally concretised. Moreover, and implicitly drawing on the idea of multifunctionality of forests, the already mentioned particular common welfare designation of public forests is explicitly codified in most of the state forest acts at the subnational level (cf. Ruppert 2006).

This common welfare designation of the public forests has been the source of long-lasting, often controversial debates on the utility of the public forest in Germany and can be traced back to the 19th century (cf. Mantel 1990; Wurz 2001). Those debates were characterised by disputes between advocates of the continental European tradition; vying for a social market economy and a high degree of state intervention versus a liberal, rather Anglo-Saxon model of economy, with a focus on “deregulation” and minimised state intervention (Wurz 2001; Memmler and Ruppert 2006).

During those debates, what was perceived as the determining factors supporting common welfare in public forest management has, however, changed (Memmler and Ruppert 2006). For a long time, the most important argument for a common welfare state-run management of public forests was the necessity of a sustainable timber supply for the German economy (Wurz 2001). In this regard, the mentioned basic features of forestry alone gave sufficient reason for public forest management: “The extensive areas necessary for the operation of rational forest management, the slowness of forest growth, the importance of nature as a production factor, the amount of working capital and the comparatively low return on the capital invested in forests, virtually labelled forestry a state-owned enterprise” (Weber 1931, p. 536, translated by the authors).<sup>1</sup>

With changing social needs and the emergence of the environmental movement in the 1960s and 70s, aspects of recreation and nature conservation gained importance. It was also in this time period that the states first began to codify the common welfare function of the public forests. This adherence was interpreted as progress when contrasted to the previous situation: “There were no provisions on public forests in the earlier forest laws. [...] Measures in the state forest have been conducted via administrative directives. By this internal regulation the public forest operations were shielded and their political purpose not always identifiable. The public forest administration was thus often subject to open and latent criticism. Sometimes the administration was blamed as striving merely for the

<sup>1</sup> “Die für den Betrieb rationeller Forstwirtschaft erforderlichen großen Flächen, die Langsamkeit des Holzwuchses, das Ueberwiegen des Produktionsfaktors ‘Natur’, die Größe des Betriebskapitals und die verhältnismäßig niedrige Verzinsung des im Walde festgelegten Kapitals stempeln die Forstwirtschaft geradezu zu einem Staatsbetrieb.”

maximisation of profits and at other times, as disregarding aspects of profitability [...] in favour of ecologic and social aspects” (Klose and Orf 1998, p. 514, translated by the authors).<sup>2</sup> In the end, the political goals of public forestry were legally disclosed, which made the “state forest more independent from political party influence on administrative orders” (ibid: 514). The new regulation did, however, not deliver an explicit definition of common welfare (Ruppert 2004, 2006).

Regardless of these legal amendments, criticism towards public forest management further intensified during the 1990s. It led to an intensive dispute on forest (policy) reforms in the last years. The debate took place under a shroud of economic crisis in the primary sectors, most notably forest production, and a financial crisis of the public budgets on one side versus a high societal appreciation of conservational and recreational ‘functions’ of the forest on the other.

Hence, the public forest administrations were criticised from two countering positions: On the one side, there were the claims of the advocates of liberalisation and privatisation, whose economic arguments gained significant influence in the course of an increasingly liberally shaped general economic discourse in the 1990s (cf. Maier et al. 2003). On the other side, there was the nature conservation movement, whose proponents criticised the operationalisation of the common welfare designation by the state-owned forest enterprises and the multifunctional forest management tied thereto, for being insufficient concerning aspects of nature conservation.

The opposed understandings become more apparent in two recent studies by Winkel (2007) and John (2007), respectively. Winkel (2007) analysed the overall forest policy in Germany from 2002 to 2005. His study was mostly based upon a social constructivist discourse analysis using different texts (scientific articles as well as political articles, and press releases of the diverse stakeholders) and participating observation. The study highlights four different and conflicting “story lines” (Table 1). Those were, following Hajer (1997), understood as narratives of social reality, through which elements of different spheres are connected and which provide a set of symbolic associations, in the end suggesting a common understanding of the

actors; in other words, as argumentative ‘tracks’ of how policy actors virtually construct their forest policy reality.

While the notion of common welfare is most in the story line of the “introverted multifunctionalists”, which are mostly represented by members of the state forest services, common welfare is not a part of the discourse of the “liberal monofunctionalist”. More interestingly, it is also not found in the argumentation of the “extroverted multifunctionalists”. Both latter mentioned groups strive for a new orientation of forest policy, but in very different directions.

At the end of the day, and supported by the overall deregulation discourse, the reasoning of the “liberal monofunctionalists” turned out to be most influential. This can be argued when looking at the far-reaching organisational reforms in the public forest enterprises that have been undertaken in most German federal states since 1999. Although reorganisation was carried out differently as regards organisational implications, the reforms were predominately oriented towards the increase in monetary returns of the enterprises (Nüßlein 2005). Besides internal structural changes, the transformation of the legal status from a public administration to a state-owned enterprise were discussed, including options of a state-owned private enterprise such as a limited liability company or a stock corporation, and partly implemented. Some thought has even been given to the disposal of the state forest (Ißleib 2006; Waldportal 2008). Similar discussions take place considering communal forest enterprises.

Noticeable in this respect was a rhetoric turn in public forest policy. Terminology of the introverted multifunctionalists dominated the communiqués on forestry throughout the 1990s until some years ago. Such terms as ‘multifunctional’ and ‘nature-oriented’ silviculture as well as the very particular welfare utility of public forestry were used (BMVEL 2001; DFV 2001) in comparison with the economy-centred jargon of the liberal monofunctionalists which spread during recent years (“performance-oriented forestry” etc., cf. DFWR & DHWR 2004; Gerst 2005; Glass 2005). Liberal monofunctionalists objection to the common welfare terminology is demonstrated vividly in the following citation: “[...] After decades long of successful development, our forests are so rich in stock and highly productive that—for the time being—the subordination of other common welfare services under the primacy of economic growth and a higher employment does not only appear to be acceptable but socio-politically necessary” (Grammel 2005, p. 528, translated by the authors).<sup>3</sup>

<sup>2</sup> “In den früheren Forstgesetzen gab es keine Vorschriften für den Staatswald. [...] Im Staatswald wurden die Maßnahmen im Wege der Verwaltungsanordnungen durchgeführt. Durch diese interne Regelung war der Staatsforstbetrieb abgeschirmt und seine forstpolitische Zielsetzung nicht immer erkennbar. Die Staatsforstverwaltungen standen daher auch häufig unter offener und versteckter Kritik. Einmal wurde ihnen das einseitige Streben nach Gewinnmaximierung, das andere Mal die Vernachlässigung von Rentabilitätsgesichtspunkten zugunsten von ökologischen und sozialen Gesichtspunkten bei der Bewirtschaftung des Waldes zum Vorwurf gemacht.”

<sup>3</sup> “[...] Nach einer jahrzehntelangen erfolgreichen Aufbauarbeit sind heute unsere Wälder so vorratsreich und leistungsfähig, dass bis auf weiteres die Unterordnung der sonstigen Gemeinwohlleistungen unter das Primat von wirtschaftlichem Wachstum und höherer Beschäftigung nicht nur zumutbar, sondern auch gesellschaftspolitisch geboten erscheint.”

**Table 1** Diverging story lines of forest actors on a ‘crisis’ in the German forest sector (Winkel 2007, p. 182)

	Liberal monofunctionalists	Introverted multifunctionalists	Harmonic multifunctionalists	Extroverted multifunctionalists
Key concepts	Private property, free market economy, economisation, Forest industry Cluster	“Forest ethos”, (implicit) multifunctionality, common welfare, etatism, and social market economy	Ecological forestry, harmony between ecology and economy	3-Pillars sustainability, ecological modernisation
Definition of problem	Economic crisis of forestry due to reform logjam and external influence not in line with the markets	Society does not recognise the integrative performance of foresters anymore	Mainstream-forestry does not sufficiently internalise the role model of nature	Understanding of sustainable forestry is outdated, need for a reform to achieve “real” multifunctionality
Problem solution	Economic liberalisation through economisation, deregulation, and monofunctioning of forest management (timber production)	Keeping up traditional behaviour until a “timber era” begins, better selling of the own performance, resignation	Orientation towards nature, use of synergies, enabling a harmony between ecology and economy	Re-orientation through cooperation with societal actors (e.g., via forest certification), ecological modernisation
Allies	Primarily economic sector, forest industry	Not strived for, strengthening of the own ‘esprit de corps’	Not necessarily strived for, but adequate for alliances with diverse actors due to the ecology-economy harmonisation narrative	Pluralistic society, ecological movement, NGOs
Appearance	Large-scale forest owners (private), universities, new economic elite in public forest enterprises, increasing importance	Particularly within the state forest services, widespread, decreasing importance	Formerly middle and large-scale (private) forest owners; today diverse actors, ecological “avant-garde” of the 1990s	Diverse types of forest owners, particularly communal forest servants, universities, not widespread

At the same time, however, the appreciation of the conservational and recreational functions of the forests remains high, and extensive reform projects encounter resistance by the population or movements of the civil society, accordingly. The resulting controversial forest reform discourse has been described by John (2007). Also, using social constructivist discourse analysis, she analysed the debate on state forest privatisation in Schleswig–Holstein. Based on the analysis of different texts including political documents related to the topic and nine problem-centred interviews (Witzel 2000; Lamnek 2005) with policy stakeholders, she identified two discourse coalitions, which adhered to opposed story lines (Table 2).

Interestingly, both coalitions considered welfare services as running counter to profit orientation in a forest

enterprise. In this respect, wood production is literally standing profit, while other aspects of forests such as biodiversity or the recreational utility are attributed to be actual common welfare services. Thus, from a pro-privatisation coalition perspective, common welfare services from the forests could be set aside, while the contra-privatisation coalition uses this dichotomy as an important argument against privatisation. By doing so, profit-oriented forest management is plainly converse to a welfare orientation as an antithetical pole. Furthermore, the different degree of public involvement which the two coalitions aspire to is remarkable. The contra-privatisation coalition stresses the necessity of a high degree of involvement of the citizenry in the decision-making process. The advocates of privatisation pursue an expert decision and opt for a sectorally closed decision-making process.

Similar conflicts concerning forest reforms and the appropriate collective to decide on the management of public forests are also apparent in other German states. In Bavaria, for instance, a referendum against reform of the states forest service came close to the required minimum of 10% valid votes of all eligible voters. As a reaction to the referendum, however, the purely economically oriented character of the Bavarian forest reform was reframed by the Bavarian government.

In the case of Schleswig–Holstein, the contra-privatisation coalition eventually succeeded in preventing the sell-off of the state forests to private investors. Notwithstanding,

**Table 2** : Story lines in the dispute on the privatisation of the state forests in Schleswig–Holstein (according to John 2007, translated and shortened by the authors)

Pro-privatisation coalition	Contra-privatisation coalition
Welfare services are luxury	Welfare services are basic needs
State forest as commercial forest	State forest as citizens forest
Privatisation as chance	Privatisation as the triumph of capitalism
Decisions about the future of the state forest need expertise (expert decision)	The future of the state forest is a public issue

the debate on the future management of the public forests and the resulting organisational structures—heavily drawing on the idea of common welfare—continued.

### The general German scientific discourse on common welfare

It is interesting to embed the specific forest policy discourse in the overarching German discourse on common welfare. In order to achieve this perspective, a literature review has been conducted—focusing on books and articles in the German language and in the time period from 2002 to 2006 from different disciplines of social science. While carrying out the literature review, different understandings of common welfare could be distinguished and categorised. Our findings were completed by the insights gained from a multidisciplinary workshop on common welfare in forestry that was conducted in the summer 2005.<sup>4</sup>

Obviously, the social science discourse is rather heterogeneous considering both the overall importance of the idea of common welfare and its diverse dimensions: Neidhardt (2002), for instance, characterises common welfare as a normative construct as well as a value laden term which requires normative decisions on acceptable and non-acceptable goals. According to Beyme (2002, p. 137), common welfare is “a normative regulative idea seeking for a balance of interests and the minimum requirements for a just society.”<sup>5</sup> Following Steinlin’s (2003) considerations, common welfare could be characterised as a utopia based upon ethical foundations, as the never completely achievable end of societal searching processes.

Other authors pinpoint the strategic use of the common welfare term: Offe (2002), for instance, refers to it as a rhetoric phrase, in which its users pursue a certain and sometimes hidden purpose within. Welzel (2002, p. 109 et seq., translated by the authors) notes that common welfare is primarily serving “as a political campaign phrase in the public discourse”—even as a “legitimizing phrase for any goals.”<sup>6</sup> In this sense, the idea of common welfare would have been used by various groups with different interests, e.g., in labour and ecological movements. This is one

reason for the objection to the whole concept of common welfare brought forward by Ekardt (2004), who argues in favour of a replacement of the common welfare rhetoric by a “liberal theory of justice and sustainability” (Ekardt 2004, 2005).

Von Detten (2003) considers common welfare to be a ‘boundary object’, whose sense is to provide an identifiable common intersection for very heterogeneous interests of various groups. Thus, the term is of rhetorical importance to various interest groups and is enduringly used as a reference but has different meanings for different parties, which also change over time. Thereby, different normative accesses are identifiable, making a uniform terminological definition impossible. Following this idea, the term common welfare would also mediate between different disciplines or between science and ‘non-science,’ respectively, as an ‘exchange area of knowledge’ (Haag and Matschonat 2002).

The mediating and boundary functions of the term on a abstract level immediately diminishes, however, when a more concrete content-wise definition of common welfare is strived for: “There exists no consensus about who should be included in the ‘common’ [...], nor about, what is meant with ‘welfare’ and how to determine it [...], nor about the focussed time horizon [...] and finally, also not about the question, a common welfare of whatever kind can be realised politically (Buchstein 2002, p. 217, translated by the authors).”<sup>7</sup>

These problems can be categorised in accordance to Offe (2002) and Buchstein (2002), whereby the different dimensions are not perfectly disjunctive:

1. *Social dimension (who)*: It asks for the collective, whose good shall be served (Offe 2002).<sup>8</sup> Many levels of consideration, from embracing families to the whole humanity, are possible. In most cases, however, the nation state or its subnational levels, respectively, are chosen as reference levels to determine common welfare. It goes without saying that such a nation-state-oriented determination leaves much room for criticism as the world becomes more and more globalised (cf. Jachtenfuchs 2002).
2. *Factual dimension (what)*: It asks for the concrete contents of common welfare. In order to identify

<sup>4</sup> The papers presented at the workshop were published in Memmler and Ruppert 2006.

<sup>5</sup> “Eine normative regulative Idee, die nach Ausgleich der Interessen und nach Mindestanforderungen für eine gerechte Gesellschaft sucht.”

<sup>6</sup> “... der Gemeinwohlbegriff in erster Linie als politische Kampf-formel im öffentlichen Diskurs” als ... “Legitimationsformel für beliebige Ziele.”

<sup>7</sup> “So herrscht keine Einigkeit darüber, wer von dem, Gemein’ umfasst werden soll [...], auch nicht darüber, was unter deren, Wohl’ zu verstehen ist und wie es festzustellen ist [...], auch nicht über den darin jeweils anvisierten Zeithorizont [...] und schließlich auch nicht über die Frage, wie ein auch immer geartetes Gemeinwohl politisch zu realisieren ist [...]”

<sup>8</sup> “Welche Gesamtheit ist die Gemeinschaft, deren Wohl gedient werden soll?”



values to concretise the term common welfare, such aspects like international peace, social justice, public health, or sustainability are repeatedly mentioned (Offe 2002).

3. *Temporal dimension (how long)*: It questions whether actual decisions on common welfare be evaluated as ‘right’ from a future retrospective. In this context, Offe mentions ‘sustainability’ as an example supporting the temporal structure of concepts of common welfare (Offe 2002).
4. *Procedural dimension (how)*: It asks for the methods for including responsible actors in determining common welfare. The following groups are particularly pointed to as being welfare actors in the literature: the state including administration, companies, interest groups, parties, civil society, third sector, churches, and educational and scientific institutions. Which actors concretise common welfare, and in which ways, depends highly on the respective underlying concept.

The procedures to determine common welfare differ in accordance with the respective basic normative attitude. In various social science disciplines, mainly seven concepts can be distinguished and can be grouped as follows<sup>9</sup>:

1. *Content-oriented, closed concepts*:

- (a) *Substantialist, closed welfare concepts*: In these concepts it is assumed that the substantial content of common welfare is clearly and correctly identifiable, irrespective of the preferences of the members of the collective (cf. Fuchs 2002).
- (b) *Negative definition*: These concepts assume that it is easier to identify what detracts from common welfare (Offe 2002; von Arnim 2004) than positively determining its content. In this context, dichotomies are formulated, such as common welfare and private or self-interests, or common welfare and profit orientation.
- (c) *Organistic welfare concepts*: Here the basic assumption is that a community is considered to be more than the sum of its individuals. Thus, common welfare has to be virtually gained by a higher insight in the needs of the organistic community. In that sense, common welfare is a specific and a priori determinable end. Welzel (2002) points at the importance of social and political philosophies (e.g., the German philosophical idealism and holism of Hegel) in the context of organistic concepts of common welfare.

2. *Process-oriented concepts with a certain preference for one governance mode*:

- (a) *Material welfare concepts*: This juridical concept is used by the German judiciary in order to make ‘concerns of common welfare’ operational in concrete cases of conflicting demands. In doing so, a hierarchy of concerns is determined in a balancing process under consultation of the respective laws (Schuppert 2006; Uerpmann 2002).
- (b) *Economic concepts*: The well-being of the common plays a central role in most economic concepts. Besides societal self-coordination by means of markets and contracts between many individualist and independent actors, which is essential for most economic concepts of common welfare, those concepts also consider state interventions as necessary for the assurance of common welfare. These interventions are, however, accepted to a varying degree. Economic actors can contribute to the common welfare either indirectly, by following their individual economic goals within the frame of externally set or self-chosen common welfare obligation, or directly, via charitable or non-profit activities (Eichhorn 1984).
- (c) *State-focused concepts*: These concepts underline the role of the state as the “guardian, interpreter and enforcer of common welfare” (Münkler and Bluhm 2001, p. 9 et seq.).<sup>10</sup> The state has to ensure common welfare and is expected to act and steer in this sense; as egoistic behaviour of private actors together with market failure leads to an undersupply of many goods, particularly those, which can not be valued in monetary terms. Moreover, common welfare is assumed to be the original legitimising function of the state (Brugger 2000; Schuppert 2003). In this respect, officials decide through administrative procedures on common welfare determination, and public enterprises contribute to their implementation by actively serving a public interest.
- (d) *Pluralistic, procedural welfare concepts*: These concepts bind common welfare to the preferences of pluralistic society. Accordingly, they put their main emphasis on the procedures of common welfare determination. It is determined via the vote of a majority, or the principle of consensus, e.g., by negotiation or an argumentative discourse based on mutual understanding following Habermas. In this context, indirect procedures of common welfare determination, via democratically legitimised representatives (parliaments) and basis-democratic bottom-up concepts, can be distinguished: In the latter case,

<sup>9</sup> This grouping has been performed by the authors of this article based on different classification concepts in Münkler and Bluhm (2002), Münkler and Fischer (2002a), Münkler and Fischer (2002b), and Schuppert and Neidhardt (2002).

<sup>10</sup> “Hüter, Interpret und Durchsetzungsinstanz des Gemeinwohls.”

interest groups and citizens have a direct share in the negotiation process on common welfare.

Obviously, the concepts are not always clearly distinguishable from each other. However, nowadays, social scientists increasingly favour the procedural approach following pluralistic conceptions of democracy. For instance, Fischer (2002, p. 82) points out the necessity to integrate procedural elements of common welfare determination within the political system in order to avoid a purely strategic use of the concept. Similar arguments are brought forward by Schütt-Wetschky (1997), who considers a ‘publicity strategy’ to be the only option to prevent hidden particular interests from prevailing in case of contented decisions.

In this context, public participation at local and regional level is widely discussed and increasingly practiced in order to improve the democratic character of the identification and operationalisation of common welfare aspects in those concepts (cf. Brettschneider 1995; von Alemann et al. 1999; Offe 2002; Blankart 2004). This is due to the problems associated with classical representation, e.g., parliamentary procedures of common welfare operations together with administrative procedures, which may not always guarantee that the preferences of the general public are adequately represented. In doing so, the increasing pluralisation of society can be considered as a starting point for the development of an active citizen society (civil society) (see e.g., Schuppert and Neidhardt 2002), understanding citizens as direct principles, addressees, and co-performers of common welfare production (Bogumil 1999). What is more, the participation of civil society can be also used to control the implementations set by state actors (e.g., public administration and public enterprises) and to help diminish principal agent problems.

It goes without saying that also problems of a participatory, bottom-up determination of common welfare are discussed. Those are, for instance, related to time and scale issues, e.g., if superordinated and long-term stakes are not sufficiently taken into account (cf. Newig 2005), or they deal with the issue of democratic legitimacy (cf. Cohen 1997; Partzsch 2007). Consequently, participatory local common welfare determination processes are not expected to fully replace other procedures, but rather to be complementary to them. In this manner, the necessity to also identify substantialist contents is seen as way to deal with a certain ambiguity found in procedural determination (cf. Koller 2002; Schuppert 2006). As Isensee (2004) points out, even the most democratic procedure cannot guarantee that the developed operationalisation of common welfare meet basic ethical demands—e.g., related to needs of future generations—even if it represents the preferences of a majority of citizens. This complete ethical flexibility of

a solely procedural approach is often criticised, and consequently, the necessity to formulate certain basic ethical demands towards the operationalisation of common welfare is argued for. Such basic norms are often deduced from ethically justified basic rights (e.g., human rights, or freedom, cf. Ekardt 2004, 2005).

To sum up it must be stated that no consensual analysis or methodology to determine common welfare, which one could refer to, exists. Procedural approaches including local and regional participatory elements as well as material decision processes and the identification of substantialist contents for a defined community seem to be most accepted in social science literature.

### Common welfare concepts in German public forestry

Approaches in the public forestry sector in the light of the common debate

In the following, we take a closer look at the German public forest debate using the seven concepts identified in chapter 3.

#### *Content-oriented, closed concepts*

As we have pointed out in chapter 2, the German forest policy discourse tends to stigmatise conservational and recreational ‘functions’ of forests as characteristics of common welfare and, moreover, opposes them to commercial ‘functions’ of forests for timber production. Having this in mind, it has to be said that in principle all kinds of utilities of the forest provide common welfare services, e.g., also game, timber, and mushrooms (cf. Weber 2001, 2002). Obviously, the different ‘functions’ of a forest are differently evaluated, which is, inter alia, dependent upon the respectively considered or the common welfare community considered in each case. For instance, forestry associations normally do not hesitate putting the economic welfare of forest owners and enterprises, and the respective importance of timber production, on centre stage (Memmler 2003; Winkel 2007). In contrast, Michael (2006) argues that by looking at the functionality of a forest from an anthropocentric point of view, ‘transcendent’ ecosystem functions in the sense of safeguarding the functionality of the forest ecosystems should be overriding ‘contingent’, partial interests like recreation and wood production. This is justified with regard to the needs of future generations, while, as he supposes, in purely procedural processes of common welfare determination, solely the interests of the current generation will stand in the forefront.

A substantial determination of aspects of common welfare is thus hard to achieve. Likewise, it is not easy to identify what detracts from common welfare. Although there might be a certain agreement on obviously adverse common welfare behaviour, which also contravenes the law, there is a huge area of concern but a lack of agreement in the pluralist society. What is more, the different ‘functions’ of forests, e.g., the use of timber, the enhancement of biological diversity, and forest recreation, are tightly interrelated and cannot be fully provided in parallel in the same forest area. For instance, the nature conservation goal to sustain as many old growth trees in the forest as possible competes with the goals of a profit-oriented timber production (Wagner 2004; Winkel 2007, p. 44 et seq.). Apparently, the possibility of the forests to serve different needs, which are identifiable as common welfare concerns, in the same area, are limited. Consequently, and not surprisingly, no priori given consensus on the contents of common welfare in German public forest can be concerted.

*Process-oriented concepts with a certain preference for one governance mode*

The German discourse on public forests is strongly shaped by different preferences for governance arrangements. Thereby, the two dichotomies state versus private engagement as well as market versus regulatory governance can be derived (cf. chapter 2). When brought together with the conflicting societal interests described earlier, the essential question is thus, how these conflicting interests are managed.

Forest ‘functions’ are partly governed via market relations. Market relations broadly steer timber production and—to a limited extent—the allocation of game, too. Concerning other ‘functions’, for instance biodiversity or recreation, such relations did not develop. Therefore, various reasons can be given, ranging from the non-specificity of the service, the non-excludability of the users, all the way to the historic development (path dependency) of a timber-oriented production process (Ruppert 2006; Winkel 2007). As a consequence, commercial forest enterprises with an interest in economic returns will orient their activities towards the potentially profitable of forest services and systematically disregard other services.

The imperfectness of markets is one argument for the persistence of the state-owned forests, their state-run management as well as for state intervention (with forest policy instruments) even in privately owned and managed forests. Far-reaching state-focused concepts of common welfare were already the basis for the establishment of the ‘modern’ state forest services in the nineteenth century and, as we have shown in chapter 2, are still very influential in the policy discourse. However, concerning state-run

management of public forests and state interventions even in those privately managed forests, no consensus exists. What is more, the ‘common welfare orientation’ of both governance arrangements—private or state-run—is put into question from different stakeholder groups.

Concerning material concepts of common welfare operations, some examples can be found in German public forests. Interestingly, in 1990, the Federal Constitutional Court decided that in public forestry, environmental and recreational concerns take priority over economic goals.<sup>11</sup> This decision, however, was heavily discussed and opposed to by many forestry stakeholders and did not result in a notable change in public forest policy. Public forestry in this case was normally striving for a multifunctional forest management; balancing timber production, recreational, and conservational forest functions, while de facto often putting investments in timber production (Suda 2005; Winkel 2007).<sup>12</sup>

*Pluralistic, procedural welfare concepts*

As has been indicated by scholars (e.g., Fischbach-Einhoff 2005), parliamentary debates on public forestry hardly ever deliver a concretisation of common welfare for the management of public forests. Forests usually play a subordinated role in the parliamentary debate. State parliaments mostly do not take up a concretisation and balancing of different welfare concerns. Budgets are generally passed “at such a high level of abstraction [...] that the question ‘Do we want to finance the product recreation, or the product Natura 2000—yes or no?’ is not raised” (Memmler and Ruppert 2006, p. 243).<sup>13</sup> Consequently, the concretisation of the common welfare designation of public forests is largely delegated to the responsibility of the state forest services—which gives them a powerful position (Krott 2001) without being virtually controlled. An indirect but influential control is performed, however, by the budget restrictions given (Fischbach-Einhoff 2005). Together with the mentioned organisational reforms of the state forest services, which were driven by the idea of enhanced profit

<sup>11</sup> “Die Bewirtschaftung des Körperschafts- und Staatswaldes, der 58% der Waldfläche in der Bundesrepublik ausmacht, dient der Umwelt- und Erholungsfunktion des Waldes, nicht der Sicherung von Absatz und Verwertung forstlicher Erzeugnisse.” BVerfGE 82, 159, 31.05.1990.

<sup>12</sup> Winkel (2007, p. 124 et seq.) points out how multifunctional forest management was used by state forest services as a strategic concept to keep exclusive control on the forests by excluding the rivaling state agencies of nature conservation from the respective management planning.

<sup>13</sup> “Auf einem so hohen Abstraktionsniveau gefasst [...], dass dann wiederum die Frage ‘Wollen wir dieses Produkt Erholung, wollen wir dieses Produkt Natura 2000 finanzieren—ja oder nein?’, nicht gestellt wird.”



orientation, and an ambiguous definition of goals for the management of the public forests, incentives for the state forest services to concentrate their activities on profitable timber harvest and to neglect non-refundable activities do exist.

Consequently, claims for a more participatory procedural operationalisation of common welfare aspects in German public forests arose. They were, however, frequently rejected by those responsible with regard to the lack of expert knowledge to be found in civil society organisations, as well as the lack of democratic legitimacy of such groups. For instance, the advocates for privatisation in the case of the state forests of Schleswig–Holstein (Table 2) argued that the decisions about the future of the state forest must be based on forest expertise, while their opponents virtually claimed for an opening-up of the decision process including civil society and interested citizens. Thus, the story line of the contra-privatisation coalition highlights the procedural and interest-related aspect of the determination of common welfare, while their opponents claim a more substantialist conception, based on existing ‘rational’ expert knowledge.

At the national level, National Forest Programmes (NFPs) can be considered to be a participatory procedural common welfare concept. The German National Forest Programme (NFP) was launched in 1999 by the Federal Ministry of Agriculture. It was announced to be a new forest policy instrument based upon the principles of participation, holistic, intersectoral coordination, decentralisation, and long-term iterative and adaptive planning (Pülzl and Rametsteiner 2002; Humphreys 2004). Thus, it was considered to be an entirely new approach, seen against the background of the old style corporatist forest policy regime up to that time (Hofmann et al. 2001). A broad scope of actors, mostly professional stakeholder like civil agents of different ministries, forest and landowner associations, and ENGOs, participated in nine round tables of the NFP and discussed topics related to different forest functions such as forest biodiversity, the role of forests in the global carbon cycle, and the importance of sustainably harvested timber. At the 18th round table in 2006, it turned out that the representatives of the state forest services did not feel legitimised to enter into a commitment of implementation which was heavily demanded for by the ENGOs. As a consequence, some of the most influential ENGOs quit the NFP process. After this escalation, the NFP continued at a more extensive level as a multilateral communication process without political commitment. Officially, it is now framed by the Ministry of Agriculture as a panel of stakeholders formulating policy recommendations in the forefront of “important upcoming political decisions” (BMELV 2008, translated by authors). Thus, in other words, the attempt to establish a participatory procedural

common welfare concept in German national forest policy has been given up. And, moreover, one could even argue that the main political logic of the NFP processes was to control and exercise power in political disputes between actors and not to open up a truly participatory and open-ended negotiation process (cf. Winkel and Sotirov 2008); an observation, which was also made for the National Forest Programmes in other countries (Kouplevatskaya 2006 for Kyrgyzstan; Primmer and Kyllönen 2006 for Finland; Winkel and Sotirov 2008 for Bulgaria, too).

At the local and regional level, participatory forest planning procedures that are found in many other countries in public forest management (cf. e.g., Buchy and Hoverman 2000; Aasetre 2006; NRC 2008) do not play any role in German state forest management. In communal forests, the influence of civil society is gradually getting stronger, albeit most communal forests are managed by the state forest services. Examples on communal level show how managers of forest enterprises assure the ‘backing’ of those that bear the decision and important stakeholders. As regards communal forest enterprises such as Freiburg, Baden-Baden, or Lübeck, it appears remarkable that managers approached the interested public actively in each case. Thus, they virtually provoked a political priority definition and the involvement of interested stakeholders by offensively communicating the goal conflicts (Ruppert 2006).

A bottom-up procedural concept for the determination of common welfare in Germany’s public forests

In the following, we are going to argue in favour of a specific concept to deal more properly with the common welfare designation of Germany’s public forests. In doing so, we are very much inspired by participatory procedural concepts of common welfare operationalisation introduced at the end of chapter 3. This is based on the discussion above resulting in the insight that

- there is no overarching consensus on the contents of common welfare in German public forestry,
- there is no consensus on the appropriate governance arrangement for a definition of common welfare,
- there is no operational mandate given by the parliamentary system on how the common welfare designation of the public forests should be fulfilled with life, and
- a respective court decision of the Federal Constitutional Court has virtually not been incorporated into policy practice.

Our argument is that in this case, the opportunity for participation by all interested groups and citizens at the operational level appears indispensable. In this manner, we draw on the concepts of Bogumil (1999) and Schuppert and

Neidhardt (2002) and understand civil society as active citizen society and citizens as co-performers of common welfare production (cf. chapter 3). Our rationale is that at this local, operational level, where the conflicts concerning forest management issues occur, participatory processes are most likely to have a notable influence on concrete forest management decisions. On the municipal level especially, citizens can more easily have a direct influence because of local straightforwardness and the proximity to political representatives. This is a promising aspect which avoids a solely strategic use of participatory policy instruments, as described in the last chapter.

In this manner, individual local welfare determination systems can be installed, characterised by negotiation, arguing, and decision-making processes and based on the individual values and norms of multifarious groups. A balanced consideration of citizens, or stakeholders, respectively, should be enabled to identify their real needs. Various possibilities to formulate the needs, goals, and requests of citizens towards the forest exist. For instance, it can be achieved via participatory planning (Hanewinkel 2001; Fischer 2003a) and via panels of citizens or done on behalf by their local representatives (e.g., municipal councils) (Ruppert 2007). Furthermore, goal formulation via specific committees (Ruppert 2006) or citizen discussion panels as used in the context of Agenda 21 (cf. Zorner 1999) can be initiated. Even a strategy, as applied in Baden/Switzerland, to ‘fathom’ the minimum requirements via the purposeful reduction of services (to provoke the intervention and interest of citizens and thus identify their respective needs) could be seen as a viable option (Ruppert 2007). Forest certification constitutes another possibility of implementation, as long as participative processes are envisaged.

The implementation of the objectives and assigned tasks occur mostly on the level of the forest enterprise understood in the sense that the local forest manager is the contractor of the local citizens. Here, different instruments can be used to ensure implementation. Within a public forest enterprise, an apparently appropriate possibility to initiate the provision of such services for common welfare, which are not provided by markets but demanded by the citizens, consists in the internalisation of such services into market activities. The idea is, thus, to initiate the provision of these services by pricing them (cf. Mantau 1993; 1997; Moog and Oesten 2001; Oesten and Roeder 2002). Many ‘services for the common welfare’ can be valued in monetary terms and are accordingly principally marketable, like for instance direct recreational services (installation of a seat bench) or specific biotope maintenance operations (mowing of a forest meadow). Such services can be performed separately from other operational activities, namely from timber production. Thus, an efficient provision of

these services can be guaranteed by a call for bids which could be also opened up for private bidders. These services are, however, opposed to common welfare services which are barely valuable in monetary terms. These consist of services like indirect recreational services (e.g., the postponement of a timber harvest operation in respect for the recreational use) or close to nature silviculture. Due to unforeseeable variables, such as future timber prices, these are hardly distinguishable from other operational activities in the forest (Winkel 2007). Consequently, the provision of common welfare services solely via internalisation and market operation turns out to be problematic.

Therefore, a differentiated system of goals and a definition of ‘product’ orders must be strived for during the determination of common welfare. These goals should include operative goals—besides the formulation of a strategic frame of action. The claim of recreational and conservational functions is honourable, but in order to assure the coordination of the operations, as concretely as possible, needs have to be identified and parameterised. The feasibility of the determined needs of the citizens should be scrutinised and harmonised in accordance with the natural conditions and on a basis of a goal conflict analysis (Ruppert 2006).

Apparently, however, not all concerns of common welfare can be defined by such a local system. When considering the different dimensions introduced in chapter 3, it is doubtful if the proposed local systems are fully adequate to fulfil, first, common welfare concerns at a larger scale, e.g., national or even international, and, second, if they will be adequate in terms of long-term goals, for instance, long-term sustainability. Therefore, local common welfare determination systems should not be regarded as replacements for existing concepts, but be seen as additional, complementary instruments, outweighing their weaknesses. In this sense, the given regulative system of the institutional environment at state, federal, and European levels (e.g., via forest acts, management standards for public forests, or reservation systems) constitutes an institutional framework for the local decision processes that at least contributes to fulfilment of the demands of common welfare of the superordinated levels—which is not to say that reforms of common welfare governance arrangements at those levels are not needed, as well (cf. chapter 4.1). Moreover, concerning long-term issues like sustainability, expert knowledge provided by forest service managers can contribute to the consideration of long-term consequences of decisions that are not adequately taken into consideration by normal citizens and other stakeholders. In this sense, forest service managers are not only agents and contractors of the citizens in the implementation of operationalised common welfare demands but also fulfil an evaluating function towards the claims of citizens as

regards their long-term feasibility and potential conflicts. They must engage in demonstrating the consequences of different management options as decided upon by the local citizens and stakeholders. The decision on the most favourable management option, however, is to be drawn—within the institutional framework provided by respective decisions of higher policy levels—by the citizens and their representatives, respectively.

## Conclusions

As referred to in this article, German public forests and the respective public forest services bear an important responsibility for the common welfare function of forests. This is *inter alia* due to the manifold conflicts between different forest ‘functions’ as well as with regard to the limits of market stewardship (e.g., due to the limited monetary quantifiability of many forest ‘functions’) and other specific features of resources: such as the possibility of irreversible interventions or the problematic substitutability of nature. Governance arrangements in public forest policy must consider these aspects if public forests should be managed according their common welfare designation.

The state forest service reforms that took place in many German states seemed to be heading towards a different direction than such strategies. They—as indicated by the story line of the pro-privatisation coalition in Table 2—gradually aimed at an increased commercialisation of public forest management in order to increase revenues, and a prioritisation of wood production, regardless of the increased conflicts with other forest ‘functions’. Taking the findings of this article into account, it is not transparent and, even more, seems to be doubtful, if such an approach is appropriate if the common welfare of public forests is to be taken seriously.

Generally, the rationale of those processes can be put into question, if one considers the rather small direct contribution of German forestry to the value added in terms of the economy and takes into account the literature that points to the importance of non-monetary functions of the German forest for society (Bastian and Schreiber 1994; Pauli and Krafft 2000; Rapp et al. 2001). The meaning attributed to different forest functions by the society might exceed the value of pure timber forestry significantly—even in economic terms. For example, the value of the forests in terms of recreation alone is numaralised with annually ca. 5 billion Euro (Elsasser 2001). It might be questioned how a strong focus on revenues from timber production in the public forests be justified when considering these findings and the legally codified common welfare determination of these forests.

What is more, the approach is also doubtful in the specific context of the EU regulation. As Memmler and

Ruppert (2006) have pointed out, a concrete and transparent common welfare designation is the *conditio sine qua non* to reconcile compensatory payments for common welfare services of the public budget with the EU legislation. That is to say, the enterprise needs an official and clear mandate to provide a precisely specified ‘service in the common interest.’ The reasoning for such a mandatory obligation and the requirement of transparency is to avoid the distortion of competition in favour of public enterprises and the parallel subsidisation of activities that would fit into the markets. In addition, the state should, for reasons of competition law, only operate economically if private parties cannot be commissioned to provide the service, perhaps due to particular requirements, be it a lacking profitability or a lacking monetary quantifiability (EU 2008). In this sense, only an explicit consideration and clear operationalisation of the common welfare determination of public forests justifies the existence of public forest enterprises against the background of a market economy.

The introduction of a local bottom-up procedural concept for the determination of common welfare would be a huge step forward in meeting such demands. This is not to say, that those processes can fully replace existing governance arrangements, as we have pointed out in chapter 4.2. Moreover, these processes have to be integrated in the existing institutional framework and would thus enrich decision processes by new, pluralistic and locally diverse needs and related types of knowledge (cf. Fortmann and Ballard (2009) in this issue). Although forest expertise plays an important role in the decision-making process, procedural common welfare processes on local levels would add an alternative dimension to it, which is more likely to reflect the ongoing pluralisation of society in terms of knowledge and demands as well as the rising awareness of the political and value-bound character of all kinds of knowledge, including that of experts (cf. Fischer and Forester 1993; Fischer 2003b; Weingart 2003).

It should be pointed out, finally, that the proposed procedural concepts for the determination of common welfare do not contradict efforts to make state forest enterprises and services more efficient. Efficient organisational structures and the implementation of the common welfare designation of public forests are not opposing to each other. This holds true if efficiency is defined in terms of the best realisation of the common welfare goals of the state or community by the forest enterprise and is not understood as equivalent to profit maximisation. The improvement of the organisational structure of public enterprises is possible and useful in the context of a given primacy to overall concerns of common welfare (cf. also Ruppert 2006).

For some municipalities, however, the commercialisation of their forests by the state forest service was already

incentive enough to quit working with the state service as regards to their forest companies and instead move towards the goals of the municipality by introducing participatory forest planning and management structures. German public forest policy should not avoid being embedded in civil society structures, but actively seek out such an embedding. In doing so, it would not only be a more democratic policy, but eventually also assure its own legitimacy.

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